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ABSTRACT

This publication provides a brief overview of significant New York State laws and regulations relating to local government records. A number of additional laws and regulations contain references to specific local records and their required retention. However, this report does not contain references to legal opinions and court decisions, nor does it provide legal interpretation or guidance. The purpose of this report is merely to provide a convenient summary of the most important records, laws, and regulations. The Local Government Records Law (Chapter 737, Laws of 1987), which took effect August 5, 1988, is noted as the most important statute dealing with local government records. The statement of legislative intent (Section 57.13) reads: "public records are essential to the administration of local government...and such records need to be systematically managed to ensure ready access to vital information." Nine additional subsections of Section 57 are noted and their contents described. The Local Government Records Management Improvement Fund Law was signed into law on May 1, 1989. This law creates the New York State Local Government Records Improvement Fund authorizing county clerks to collect fees for recording, entering, indexing, or endorsing a certificate on many kinds of documents. Thirteen subsections of the Regulations of the Commissioner of Education Pertaining to Local Government Records Management, Part 185, are noted and described. An additional 10 laws and regulations relating to local government records are included in this report, as well as a State Archives and Records Administration contact address and telephone number for further information. (DB)

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Laws and Regulations Relating to Local Government Records

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BASIC RECORDS MANAGEMENT
FOR LOCAL GOVERNMENT

Laws and Regulations Relating to Local Government Records

1991

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Introduction

This publication provides a brief overview of significant State laws and regulations relating to local government records. A number of additional laws and regulations contain references to specific local records and their required retention. This publication does not contain references to legal opinions and court decisions. Certain laws and regulations discussed in this Leaflet come under the jurisdiction of State agencies other than the State Education Department. In these instances, this leaflet provides a contact address and phone number.

This leaflet does not provide legal interpretation or guidance. Its purpose is merely to provide a convenient summary of the most important records laws and regulations. Local governments needing legal interpretation or guidance should consult their counsels.

The Local Government Records Law

The Local Government Records Law (Chapter 737, Laws of 1987) is the single most important statute dealing with local government records. This law, creating a new Section 57-A of the Arts and Cultural Affairs Law, was signed into law in 1987 and took effect August 5, 1988. The new law consolidated former sections of the Arts and

Cultural Affairs Law, Public Officers Law, Town Law, County Law and Village Law in a single statute promoting improved management of local government records. The statement of legislative intent, found in Section 57.13, states that "public records are essential to the administration of local government . . . [and] such records need to be systematically managed to ensure ready access to vital information and to promote the efficient and economical operation of government."

Section 57.17 provides up-to-date definitions of such basic but important terms as "record," "governing body," "local government" and "disposition." Past definitions of "record" and "local government" were unclear, leading to frequent confusion over which agencies came under the authority of the Commissioner of Education and which materials constituted official "records."

Section 57.19 requires the governing body and chief executive official of each local government to "promote and support a program for the orderly and efficient management of records, including the identification and appropriate administration of records with enduring value for historical or other research." This section also requires that each local government designate a "records management officer" (RMO) to "coordinate the development of and oversee" its records management program. In towns and villages the town or village clerk is designated as RMO by law; in fire districts the fire district secretary is so designated. In all other types of local governments any local officer may be so designated by the chief executive official, subject to the approval of the governing body.

Section 57.21 established the Local Government Records Advisory Council (LGRAC), an advisory body appointed by the Commissioner of Education and consisting of local officials, representatives of State agencies and other citizens concerned with local government records or expert in records management and archival administration. The Council is responsible for advising the Commissioner of Education on local government records policies and procedures, state services and financial support needed to assist or advise local officials, and regulations pertaining to local government records. The Council publishes annual reports on local government records issues, and meets

regularly to advise the State Archives and Records Administration (SARA) on services and policy matters such as the promulgation of Commissioner's Regulations.

Section 57.23 outlines "oversight and advisory services" that SARA, acting for the Commissioner of Education, is to provide local governments. These services include advising on the establishment of records management programs, the identification and preservation of archival records and the development and use of micrographics, automation, and other technologies.

Section 57.25 deals with "retention and disposition" of local government records. It states that no local official may dispose of records unless the governing body has officially adopted the appropriate SARA Records Retention and Disposition Schedule. It also states that the records must be kept for their minimum legal retention periods as stated in that Schedule, and that disposition cannot be made of them until they are no longer needed for any purpose.

Section 57.27 authorizes the Commissioner to designate particular local records for permanent retention because of their "enduring statewide significance."

Section 57.29 permits the "reproduction of records and the disposition of originals . . . by microphotography or other means that accurately and completely reproduces" all the information in the records. Local officials may dispose of such records provided the process for reproduction and provisions for preserving and examining the copy meet requirements established by the Commissioner of Education. Such copies are considered to be authentic and suitable for introduction as evidence in proceedings before courts and administrative agencies.

Section 57.31 permits local governments to participate in "cooperative records storage and management" programs with one another, to deposit or loan archival records to repositories and to store inactive records with commercial vendors. (NOTE: Such deposit, loan, or storage agreements must meet criteria established by SARA acting on the Commissioner's behalf.)

Section 57.33 excludes the records of the City of New York, the boroughs contained therein, any court, and any unit of State government, from the terms of the Local Government Records Law.

In addition, a revised subdivision one of Section 57.07 of the Arts and Cultural Affairs Law was added to clarify the records-related responsibilities of local government Historians. This section shifts the emphasis away from Historians' "collecting" records themselves to a broader role in supporting records management programs, promoting preservation and wider use of local government archival and nongovernment historical records, and carrying out research in such records.

Local Government Records Management Improvement Fund Law

The Local Government Records Management Improvement Fund Law was signed into Law on May 1, 1989. This Act (Chapter 78, Laws of 1989) amends the Arts and Cultural Affairs Law, Civil Practice Laws and Rules, State Finance Law, Judiciary Law and Administrative Code of the City of New York.

This law creates the New York State Local Government Records Improvement Fund in the joint custody of the State Comptroller and the Commissioner of Taxation and Finance. The law authorizes county clerks (and the Register of New York City) to collect a $5.00 surcharge for recording, entering, indexing, or endorsing a certificate on many kinds of documents. The surcharge is also collected for assigning an index number to an action pending in county or Supreme court. Twenty-five cents of each $5.00 surcharge is retained locally to help offset administrative expenses, with the remainder then deposited into the Improvement Fund.

The Fund supports a regional advisory and technical assistance system under the direction of SARA and the employment of specialists in archives and records man-

agement. It also supports a competitive program for grants-in-aid to local governments for records management improvement, retention and disposition, preservation, reproduction, and cooperative records storage. The Commissioner of Education is authorized to make such grants after consultation with the Local Government Records Advisory Council. Grants are to be awarded with regard to equitable geographic distribution of funds. The Council is also authorized to review annual operational and expenditure plans for the Fund. The Law requires that the Commissioner of Education annually report to the Governor and Legislature on the status of revenues and expenditures of the fund, and on local government records management in general.

In 1990, the Law was amended to increase the amount of money available for regional services and administration, and to increase the eligibility for grants to include the Register of the City of New York and the County Clerks of the five counties within New York City.

Regulations of the Commissioner of Education Pertaining to Local Government Records Management (Part 185, *Official Compilation of Codes, Rules and Regulations of the State of New York*)

NOTE: These Regulations were issued pursuant to the Local Government Records Law and the Local Government Records Management Improvement Fund Act.

Section 185.1 defines additional terms not defined in the statute, terms such as "records management officer," "records management program" and "vital records."

Section 185.2 relates to the designation and responsibilities of records management officers. It provides for their designation and reporting requirements, and delineates the duties of the position in greater detail than the enabling statute. An amendment of this section, effective in 1990, provides newly created local governments a reasonable time period in which to designate a RMO and report this designation to SARA, and also absolves housing authorities and the Utica Transportation Authority from having to designate RMOs. An amendment of this section, effective in 1991, removes a requirement that

Bronx, Kings, New York, Queens, and Richmond Counties designate RMOs.

Section 185.3 sets the terms, appointment, procedures, and duties of the Local Government Records Advisory Council (LGRAC). It also designates SARA's Local Government Records Bureau as secretariat to the Council.

Section 185.4 sets forth the criteria in establishing minimum legal retention periods for local government records, and provides a means for a Records Retention and Disposition Schedule to be superseded, or consent to that Schedule's use by a particular local government withdrawn.

Section 185.5 covers the issuance of Records Retention and Disposition Schedules. It lists all Schedules in effect when the Regulations were issued and also includes the newest Schedule, *CO-2*, for use by counties. It also allows a public benefit corporation to obtain permission from SARA, acting on behalf of the Commissioner, to use its own retention schedule in lieu of *Schedule MI-1*, providing the two schedules do not differ substantially. This permission can be renewed on a year to year basis. An amendment of this section, effective in 1991, allows the Clerks of Bronx, Kings, New York, Queens, and Richmond Counties to use *Schedule CO-2*.

Section 185.6 sets procedures for the disposition of records not listed on Records Retention and Disposition Schedules, and for records rendered unusable by disasters. An amendment of this section, effective in 1991, permits the disposition of records predating 1910 with the express written Consent of the Commissioner of Education, administered by SARA. It also permits the legal destruction of certain specified employee disciplinary, investigative, and performance evaluation records after a period of time stated in a provision of a collective bargaining agreement in effect between a local public employer and a public employee labor organization.

Section 185.7 establishes basic requirements for microphotography of local government records, including storage requirements, inspection and quality standards, targeting, and certification of microfilm.

Section 185.8 states that standards will be established by the Commissioner of Education for optical disk and other advanced technologies.

Section 185.9 requires that contracts for storage of local government records in facilities other than those maintained by the local government meet conditions established by the Commissioner of Education.

Section 185.10 establishes certain eligibility criteria for local governments to apply for grants for the purposes of local government records management improvement. The criteria includes designation of a records management officer, adoption of the appropriate retention and disposition schedule by the local government, and development of a records management improvement policy statement that has been approved by the governing body of the local government. This section also enumerates types of projects eligible for grants, certain requirements for the application process, and lists eligible expenditures for grant-funded projects.

Section 185.11 contains the full text of *Records Retention and Disposition Schedule MU-1* (as Appendix H).

Section 185.12 contains the full text of *Records Retention and Disposition Schedule ED-1* (as Appendix I).

Section 185.13 contains the full text of *Records Retention and Disposition Schedule CO-2* (as Appendix J).

Other Laws and Regulations Relating to Local Government Records

Section 104.1, 22*NYCRR* (Regulations of the Judiciary) sets guidelines for the disposition of court records in New York State. Records of all courts, including jury records, are not disposable under the authority of the Commissioner of Education, but rather according to retention schedules promulgated by the Office of Court Administration. Contact OCA's Record Office at 80 Centre Street,

Room 502, New York, NY 10013 (phone 212-587-4778) for a copy of the appropriate schedule and additional information.

Section 57.05, Arts and Cultural Affairs Law, sets forth procedures for the disposition of State government records, including those found in local offices. These include motor vehicle records found in county clerks' offices; information on their disposition can be obtained from the Records Officer, N.Y. State Dept. of Motor Vehicles, Swan Street Building, ESP, Albany, NY 12228 (phone 518-474-2381). Such State government records also include official birth, death, and marriage records generated pursuant to Article 41 of the Public Health Law; their disposition is regulated by the Vital Records Section, N.Y. State Dept. of Health, 2nd floor, Corning Tower, ESP, Albany, NY 12237 (phone 518-474-3075). Information on the disposition of State government records can be obtained from SARA's Bureau of Records Analysis and Disposition, Room 9C71 CEC, Albany, NY 12230 (phone 518-474-6771).

Records of County Boards of Elections also are subject to Section 57.05, Arts and Cultural Affairs Law. Disposition of them may be made according to a *General Retention and Disposition Schedule: Election Records* prepared by SARA and the State Board of Elections. Copies of this Schedule, and information regarding its use, can be obtained from SARA's Local Government Records Bureau or from the Administrative Officer, N.Y. State Board of Elections, 1 Commerce Plaza, Albany, NY 12210 (phone 518-474-6336).

Section 63.10, State Finance Law, and Part 55 of 2*NYCRR* regulate the disposition and destruction of canceled obligations (bonds, corporate stock, notes, or coupons). Their disposition is not subject to the Local Government Records Law. Questions concerning destruction of canceled obligations should be addressed to the Municipal Affairs Division, N.Y. State Comptroller's Office, Alfred E. Smith State Office Building, Albany, NY 12236 (phone 518-474-4037). A fact sheet on the subject, and copies of the applicable law and Regulations are available from SARA's Local Government Records Bureau.

Section 89.2 of the Judiciary Law presently governs records of county district attorneys. It is unclear whether this section covers all records, including general administrative ("housekeeping") records, of a county district attorney's office, or only case investigation records. Application for disposition of any records of a county district attorney must be made to the appropriate judicial department of the Appellate Division of State Supreme Court.

Section 59 of the Public Housing Law regulates the "disposal of records" of housing authorities, requiring each housing authority, in effect, to establish minimum retention periods for its own records. **Section 60** of the same law permits housing authorities to substitute microfilm or other copy for original records. Disposition and reproduction of these records is not subject to the authority of the Commissioner of Education. The Commissioner's Regulations were amended in 1990 so that municipal housing authorities and the Utica Transportation Authority do not have to designate records management officers.

Section 68 of the Transportation Law governs disposition of records of the Utica Transportation Authority. It allows that authority to establish minimum retention periods for its own records and dispose of valueless records without the prior consent of the Commissioner of Education.

Section 208 of the Civil Practice Laws and Rules provides persons who have arrived at "majority" (age 18) an additional three-year period to bring legal action as adults relative to any event which occurred when they were still minors. This three-year extension runs even if the normally applicable statute of limitations has expired before one's 21st birthday has arrived. This statute has broad implications and requires retention of many records series long enough to protect the legal rights of minors. Therefore it is reflected in a number of retention periods found on SARA schedules.

Article 6 (Sections 84-90) of the Public Officers Law, known as the "Freedom of Information Law," covers access to most local government records. This Law contains a definition of "public record" similar to that found in the Local Government Records Law, and has a strong correlation to the latter Law because the availability of

local government records is directly connected to these records having been retained for their legal minimum retention period or legally destroyed. For a brochure on the "Freedom of Information Law" and any additional information on this subject (and on "open meetings"), contact the Committee on Open Government, N.Y. State Dept. of State, 162 Washington Avenue, Albany, NY 12231 (phone 518-474-2518.)

Section 80 of the Public Officers Law requires that outgoing public officials deliver official records to their successors in office and outlines legal action which can be taken if this transfer is not completed.

Sections 175.20 and 175.25 of the Penal Law deal with "tampering with public records" in the second and first degrees respectively. Because such tampering constitutes either a class A misdemeanor or a class D felony, persons can be prosecuted, and, if convicted, sentenced accordingly for these offenses.

For additional information on local government records, contact:

Local Government Records Bureau
State Archives & Records Administration (SARA)
Room 10A63, CEC
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